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# THE RULES OF THE HOUSE OF REPRESENTATIVES.

BY A. P. GARDNER.

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RIGHTLY or wrongly, the idea has gone abroad in the United States that legislation, so far as the House of Representatives is concerned, is left entirely in the hands of the Speaker. While many people may not adopt this extreme view, there is at all events a well-defined impression that the order of business is so much in the Speaker's hands that it is an easy matter for him, when he so desires, to smother important measures or leave them pending on the calendar at the expiration of a Congress.

Of those who defend the present Rules of the House, some deny absolutely that the Speaker possesses any such autocratic power, and others, while admitting its existence, maintain that it is just and right that the chosen representative of the majority party should be clothed with it.

Obviously, these two contradictory positions cannot be disposed of in the same breath. The first step must be to establish the facts. Before making up his mind on this question, the average man desires a clear showing as to whether or not the Speaker does in fact possess such transcendent authority, and, if so, he asks for an exposition of the customs or rules which accord it to him. In explaining the situation to the layman, it is needless to trace the course of a bill through all its stages, but a clear understanding is impossible unless four cardinal principles are thoroughly grasped. The seeker for the truth must know and understand, first, how a bill gets before a Committee; second, how a bill gets out of Committee; third, how a bill reported by a Committee gets before the House for consideration and action; and, fourth, the function that parliamentary "privilege" performs in determining the order of business of the House.

Any member may introduce a bill or resolution. This is done by placing it in the basket on the Clerk's desk, from which it must be taken immediately and referred to the appropriate Committee. If that Committee so desire, the matter may remain undisturbed, without receiving the slightest consideration, until the expiration of the Congress. An exception to this rule is made in the case of Resolutions of Inquiry addressed to the heads of executive departments. Such resolutions must be reported back to the House from Committee within one week, or else they become privileged under the Rules.

An exact definition of the parliamentary meaning of the word "privilege" cannot easily be given. It is sufficient, however, to bear in mind that the Rules or the customs of the House accord this quality to certain specified classes of questions, and that matters so endowed take precedence of everything else except other business with which Rule or custom invests an equal or higher privilege.

When any question is privileged for consideration, it may be called before the House for action at any time. Every other matter must give way, except such as are equally or more highly favored. It must be borne in mind, however, that only a very small percentage of the bills introduced are entitled to precedence of any sort. In fact, most of the important bills of general public interest are entirely unprivileged under the present Rules.

Further on in this article the practical effect of privileged questions will be shown.

Returning to the history of the progress of an unprivileged measure, let us suppose that the bill or resolution which has been introduced and referred to a Committee is of such merit or importance that it cannot summarily be relegated to oblivion. On the contrary, perhaps, it is carefully considered by the Committee and then reported favorably to the House. In that case, it goes on to the calendar of matters awaiting action and takes its place with other reported measures listed in the order in which they have come back from the various Committees. There it awaits its turn for consideration, if, by any chance, this turn should ever arrive before the expiration of the Congress.

Under the Rules, the sixth and seventh order of business for each day provides a time when Committees, and in some cases individuals, may call reported bills off the calendar for discussion

and action by the House. Perhaps it might seem as if this arrangement of the order of business should give ample opportunity for a determined Committee sooner or later to bring any bill on the calendar before the House for action. No matter how contentious in its nature it might be, no matter how badly placed on the list and no matter how little it might appeal to the Speaker or his Committee on Rules, at first sight it would seem as if any reported measure could be reached. Such is not the case, however. As a matter of fact, every day is so taken up with other affairs that the sixth order of business is scarcely ever touched, except occasionally at the beginning of a session of Congress. Until this present session, many years have elapsed since the seventh order of business was ever reached at all, except in one sole instance when a short time was devoted to a comparatively unimportant bill.

Under these circumstances, it is very easy to see that an unprivileged bill, reported back from a Committee after Congress is once well under way, is certain to be placed so far down on the calendar as to make it impossible to reach it unless special means are provided either by the Speaker or by the Committee on Rules. In the nature of things, every highly contentious measure is sure to have enemies on the Committee to which it is referred. It is by no means difficult, even for a single determined committeeman, by calling for hearings or by other legitimate demands for delay, to postpone a report on any bill until a time so far advanced in the session that its place on the calendar is bound to be a very poor one.

A question naturally arises in the public mind as to what manner of business it is which so takes up the time of the House that it is impossible to reach important reports resting on the calendar awaiting recognition. "Why is it," asks the average man, "that the sixth order of business is, with very rare exceptions, only reached at the beginning of each session?" The answer is found in the fact that the daily meetings of the House are taken up by routine business, by the consideration of conference reports relative to differences between the House and the Senate, and by the endless discussion, germane or not germane, of the thirteen or more different appropriation bills which must be passed in every session. From time to time, moreover, Special Orders or Rules are reported from the Committee on Rules providing

for action on measures which meet with its approval. Generally these Rules are so worded as to afford but limited debate on the bills in question and little, if any, opportunity is given for substantial amendment. In addition to the varieties of business just enumerated, a limited number of days in each month are devoted to the affairs of the District of Columbia, to private matters such as pension bills and claims, and to the passage under Suspension of the Rules of certain bills previously approved by the Speaker.

It is now necessary to note the part played by so-called privileged measures in obstructing the path of other important legislation. The rules provide that certain bills shall enjoy especial privilege, which, as has been shown, means that they may be brought up for consideration at any time in or out of their regular turn. The most important classes of measures to which this privilege is accorded are appropriation bills and revenue bills. It is evident, therefore, that as soon as the first appropriation bill of the session is reported out of the Committee it may at once be brought before the House for consideration, and the time very readily may be spun out in debate and amendment until another appropriation bill is ready to take its place. After a session is well under way, it is usually the case that there are at least two appropriation bills ready to report or awaiting action at the same time, so that the opportunity of reaching bills to which privilege is not given becomes absolutely visionary, unless the Committee on Rules or the Speaker lends a hand.

It sometimes happens, as was the case at the end of the first session of the last Congress, that all appropriation bills have passed the House and yet time remains for further work. Obviously, this would seem to be an opportune moment to go to the calendar and call up for consideration some measure of importance patiently awaiting the action of the House. On the occasion alluded to, however, there was found on the calendar a convenient bill which in some way affected the raising of revenue and was therefore entitled to the highest privilege. To be sure, it only referred to the consolidation of a few small custom-houses, but that was enough to give it precedence; so it was called up and the few hours of the session remaining were exhausted in its nominal consideration. Yet there does not seem to have been any effort made to pass that bill either then or since.

Often, of course, there are to be found in disadvantageous positions on the calendar certain unprivileged measures which the Speaker himself believes that the House ought to consider. Just as is the case with similarly placed bills of which he disapproves, they cannot be reached under the regular Rules. Sometimes such bills are passed under Suspension of the Rules; but often it is easy to foresee that the two-thirds vote necessary for Suspension cannot be obtained. When a situation of this kind arises, recourse is usually had to the Committee on Rules, which reports a Special Order or Rule providing for the prompt consideration of the measure desired. Frequently, as has been pointed out, these Special Orders are so narrowly drawn as to permit but little debate and practically no amendment. A case in point, which shows the one-sidedness of this system, occurred towards the end of the session in 1906. The Immigration Bill could not be reached in the ordinary course of business. It was a long and complicated measure consisting of forty-one sections, and should have been allowed full discussion with ample opportunity for amendment. The Committee on Rules, however, brought in a Special Rule providing for its immediate consideration, permitting no debate at all on thirty-nine of its sections and permitting no amendment except to two of them. Moreover, the Order was so drawn that a separate Yea and Nay vote could not be had on any of the bill's important features.

No one denies the extreme difficulty of reaching any measure to which the Speaker is opposed; but in a recent publication Mr. Asher C. Hinds, the parliamentarian of the House of Representatives, maintains that, though difficult, it is possible to do so. He points out the fact that it is always possible for a majority to vote down the question of consideration of appropriation bills, and then to vote down the consideration of all intermediate business until the desired bill is reached. He calls attention to the fact that this step has been successfully undertaken in the past and, indeed, such is the case; but, so far as a fairly exhaustive search shows, the last time such a thing occurred was over a decade ago. The occurrence took place during the contest over the Hawaiian Bill. It is true that Mr. Speaker Reed was opposed to that measure, and it is true that in spite of his opposition it was brought up before the House; but a consultation of the records at once reveals the fact that neither he

nor his appointees, the Committee on Rules, by any means attempted to exhaust the parliamentary means at their disposal to stave off the undesired consideration of the bill. At most, so ancient an exception only proves the rule.

But the procedure suggested by Mr. Hinds is not practicable. No matter how anxious members may be to reach a given bill of public importance, they will hesitate a long time before taking the serious step of refusing to consider one of the great supply bills of the Government. Even if they brought themselves to take this drastic course, it is more than likely that some other important bills would intervene before the one which they sought could be reached. To vote against the consideration of a meritorious bill, even for the purpose of reaching a highly important measure, would put them on the defensive before their constituents. The situation would require continual explanation before it could be understood, and their action would be misrepresented and misconstrued. Moreover, many a member who represents a district which is politically close likes nothing better than an opportunity to substitute a non-contentious bill for a contentious one. When occasion serves, such a man usually can be counted on to vote for the consideration of an appropriation bill, if by so doing he can indefinitely postpone a bill on which his constituents disagree.

Even if it were true, as maintained by Mr. Hinds, that a majority of the House of Representatives can at any time reach any bill on the calendar by voting down the consideration of intervening bills, nevertheless that by no means proves his case. It is an absurdity to say that the proper way to test the House as to its desire for the consideration of a given measure is by taking a vote on the question of consideration of some other measure or series of other measures. The proper way to defeat a bill is by a majority vote on the bill itself and not by a majority vote on some other bill.

That a majority of the House sometimes wishes to avoid meeting disagreeable questions, and therefore desires to conceal its attitude from its constituents by voting to consider other legislation, is perhaps true and is certainly most natural. It is, nevertheless, extremely doubtful whether the rules should be so drawn as to aid members in their efforts towards evasion. Men are not sent to Washington to conceal their attitude on public questions,

but to reveal them when the proper time comes. They are not in Congress to act as individuals, but rather as representatives. It ought to be beyond dispute that if any considerable part of the people of the United States desires the enactment of a measure, such measure is at least entitled to its public day in court, and its consideration should not be denied merely because Congressmen may be timorous as to their individual futures.

Yet there can be no manner of doubt that the suppression of many a bill is due rather to the timidity of Congressmen than to any rooted objection on the part of the Speaker. He, to be sure, shoulders all the blame, as indeed he should, for on him rests the responsibility of decision. Nevertheless, it is an open secret that many a member who favors a measure and, if necessary, would vote for it, privately expresses to the Speaker his hope that it will not be brought up for action. Two cases in point are the Immigration Bill of 1906 and the Littlefield Bill relative to the transportation of liquor. Many a member was well aware that he would offend constituents, no matter which way he voted on those measures.

With the exception of the Committee on Rules, most of the Committees of the House are large, being composed of from fifteen to eighteen members or thereabouts. The Committee on Rules, however, consists of but five members, of which the Speaker is one. The other four places are equally divided between the two parties; but it has always been the custom for the three representatives of the majority to act as a unit. It has generally been held that the large Committees represent in a rough fashion the sentiment of the House, whereas the Committee on Rules has usually been supposed to reflect the views of the Speaker and to act at his suggestion.

Inasmuch as the members of all Committees are appointed by the Speaker, obviously there is lodged in his hands a great power of control, not only over the action of Committees, but also over the individual action of members of the House. This fact has of late years given rise to a feeling that the time has come to make a beginning looking towards the divorce of the legislative from the judicial power of the Speaker; in other words, towards divesting him of all indirect means for controlling legislation, leaving in his hands only the same power which is wielded by the Speaker of the House of Commons in



Great Britain. As every one knows, the Speaker of the House of Commons is purely a presiding officer; his decisions are not in the least guided by party considerations, nor does he have any extraneous power which enables him to direct legislation.

To deny to the Speaker of the House of Representatives the power of appointing Committees, for that is the necessary meaning of such a proposition as has just been suggested, would be in accordance with the practice prevailing in European parliamentary bodies. With the exception of the Bundesrath, the Upper House of the German Parliament, and with the possible exception of the Parliaments of Russia and Turkey, all representative chambers in Europe either directly or indirectly select their own Committees. The military and marine Committees of the Bundesrath are nominated by the Emperor, while in Russia and Turkey parliamentary practice is so much in its infancy that no positive statement regarding them can be made.

Among the many necessary reforms in the Rules of the House of Representatives, there is one which stands out as pre-eminent. An ample and definite time should be set apart for action on important measures, not at present classed as privileged, whether they meet with the approval of the Speaker or not. Any schedule of reform which does not include such a provision is visionary and destined to failure in practice.

Although no one has as yet suggested that the right to criticise and the right to defeat a measure should be taken away from ordinary Congressmen, yet many people honestly believe that the chief function of a member should be to serve as a component part of a sort of electoral college for the choice of Speaker, that the Speaker so chosen should appoint a small Committee on Rules and with them should lay out at the beginning of each session the whole programme of legislation to be enacted. Persons possessed of such views are fond of referring to the example of the House of Commons, over which unquestionably the Treasury Bench has complete power. The British Ministry is clothed with the entire responsibility of selecting at each session the measures which are to pass, as well as the measures which are not to be considered. It is often forgotten, however, that the Treasury Bench or Ministry, as it is officially termed, must at all times and in all respects satisfy a majority of the chamber or else resign. With resignation always suspended overhead like the

sword of Damocles, it is obvious that no efforts will be spared to satisfy the members who constitute the majority.

In contrast to the situation of the Treasury Bench, the Committee on Rules of the House of Representatives is not obliged on penalty of resignation to satisfy the majority on each occasion, nor is it in any way responsible to the House except indirectly once in every two years. Even then, it is responsible only in a secondary degree, inasmuch as the House does not name the members of this Committee, but merely selects a Speaker who may or may not reappoint them.

It is often forgotten that the Ministry of Great Britain is responsible to Parliament for measures which it fails to include in its legislative list nearly as distinctly as for measures which it brings forward. At the beginning of each session, proceedings are introduced by the King's Speech, which is supposed to foreshadow the programme of the Ministry. If this programme omits to make mention of some measure which the Commons think should properly be included, an attempt is made to include it by an amendment to the address of the House in reply. In case a substantial amendment is adopted, the Ministry must resign; and, in fact, one of Lord Salisbury's Ministries fell on precisely such an occasion. Since that time, no Ministry has been bold enough to omit from its programme a question which the people at large earnestly desire to have considered. If by chance it should do so, every session presents available opportunities for the House of Commons to cause the Ministry's fall by the expression of its resentment.

The United States is entering on a critical period in its legislative history. The next decade will decide the drift of affairs. Either the National House must once more become a deliberative body in the sense in which that term has been used in the past, or else the people of this country must decide between two alternatives. They may leave the power in the Speaker's hands, where it is at present, or they may destroy representative government by adopting the system of Initiative and Referendum.

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